IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 284 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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STATE OF GUJARAT

Versus

SOLANKI NAVUJI NARJI

Appearance:

1. Criminal Appeal No. 284 of 1986

MR KG SHETH APP for Petitioner No. 1

MR JM BUDDHBHATTI for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 19/08/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.M.KAPADIA)

1. In this Criminal Appeal filed under Section 378 of the Code of Criminal Procedure ('the Code'), appellant - State of Gujarat seeks to challenge the judgment and order dated November 5, 1985 recorded in Sessions Case No.69 of 1985 by the learned Sessions Judge, Mehsana by which respondent/accused came to be acquitted of the offence under Sections 302, 504 and 506 (2) of the Indian Penal Code ('IPC' for short) for commission of murder of deceased Ramsinh whereas came to be convicted of the offence under section 323 of the IPC for causing injury to the complainant Pratapji and he was ordered to suffer imprisonment for seven months which he had undergone pending the trial.

2. The prosecution case, in short, is the following:

2.1. The complainant - Pratapji and accused Navuji are real brothers. On the day of the incident, that is, on February 28, 1985 the complainant Pratapji had gone to the house of accused Navuji. He had paid Rs.600/- as share of the accused of the sale price of Raida. At that time accused Navuji told the complainant to give more money for his labour work but the complainant refused to give. Therefore altercation took place between them and the accused abused the complainant by using filthy language. The accused thereafter took out a stick and gave a blow with it aiming on the head of the complainant. The first blow which was aimed at the head was successfully wielded away by the complainant by putting his hand. Thereafter accused gave second blow on the waist of the complainant. On receipt of the stick blow Pratapji felt giddiness and he ran away. On hearing the commotion, Suryaben and deceased Ramsinh came there and since Ramsinh intervened the accused gave stick blow on his head and on receipt of the said stick blow Ramsinh fell down and became unconscious. Thereafter injured Ramsinh was removed to Mansa hospital in a tractor where the doctor advised to take him to Civil Hospital, Ahmedabad for further treatment. Thereafter he was admitted at Vadilal Sarabhai Hospital, Ahmedabad where he remained as an indoor patient for a period of three days and thereafter succumbed to the injuries.

2.2. In respect of the aforesaid incident, one Information Entry, that is, Janva Jog entry was recorded at Kalol Police Station. Police Head Constable Shankarji of Kalol Police station was entrusted with the investigation. He went to V.S. Hospital and thereafter recorded one complaint which he has registered in the station diary of Kalol Police station. Thereafter he has

drawn Panchnama of the scene of the occurrence. Since the witnesses were at Ahmedabad he could not record their statement. He recorded statement of the persons residing in the immediate vicinity. Thereafter as he received information about the death of injured Ramsinh in the hospital at Ahmedabad he has added the offence under section 302 of the IPC and thereafter handed over the investigation to Police Inspector Udwani.

2.3. After taking over the investigation, Police Inspector Udwani, arrested the accused and drawn the panchnama of his body. As the accused had shown his willingness for recovery of the stick which he had used for commission of the offence, the Police Inspector drawn preliminary panchnama under section 27 of the Evidence Act and discovered the stick and thereafter prepared the final panchnama.

2.4. On completion of the investigation, Police Inspector Udwani filed charge sheet against the accused for the commission of offence under sections 302, 504 and 506 (2) of the IPC for murdering Ramsinh and u/s. 323 of IPC for causing injury to Pratapji in the court of learned Chief Judicial Magistrate, Mehsana.

2.5. On committal, the learned Sessions Judge, Mehsana framed charge against the accused for commission of the offences punishable under sections 302, 504 and 506 (2) of the IPC and also under Section 323 of the IPC which was read over and explained to him to which he pleaded not guilty and claimed to be tried and thereupon the accused was tried by the learned Sessions Judge in Sessions Case No.69 of 1985.

2.6. In order to bring home the culpability of the respondent/accused, prosecution has examined number of witnesses and placed reliance on several documents. The prosecution has mainly relied upon the evidence of P.W.4, Dr. Smitaben Chetanbhai at Ex.11 to prove the homicidal death of the deceased. To prove that accused had inflicted blow on the deceased, prosecution relied upon the evidence of P.W.3, Suryaben Pratapji, who is the widow of the accused and was at the relevant time present at the place of occurrence vide Ex.10.

2.7. On appreciation and evaluation of the ocular as well as documentary evidence, the learned Sessions Judge came to the conclusion that the deceased died a homicidal death. However, the learned Sessions Judge has not believed the oral testimony of the sole eye witness Suryaben by holding that her evidence is bristled with

contradictions and therefore does not inspire confidence and hence she cannot be an eye witness to the incident. On the basis of the said evidence, the learned Sessions Judge came to the conclusion that the charge against the respondent/accused for the commission of murder of Ramsinh is not proved. However, on the oral testimony of P.W.2, Pratapji, at Ex.8, who happens to be the complainant, charge under section 323 of the IPC for inflicting injury to him is proved and therefore the learned Sessions Judge has convicted the respondent for commission of offence under section 323 of the IPC and sentenced him to suffer imprisonment for a period of seven months which he has already undergone pending trial. It is this judgment and order of the learned Sessions Judge which has given rise to the present appeal at the instance of the State Government.

3. Mr. K.G. Sheth, learned APP for the appellant State of Gujarat contended that the impugned judgment and order of acquittal passed by the trial court qua offence under sections 302, 504 and 506 (2) of the IPC, is contrary to law and evidence on record as the trial court has materially erred in not convicting the accused for the major offences with which he came to be charged. It is also asserted by him that the trial Court materially erred in not appreciating the fact that the deceased had received injuries right on the middle of the head. The very fact that the delicate portion of the body was selected while delivering the blow by the accused goes to show that the accused had entertained intention not less than the intention to commit the murder. It is also emphasized by him that the reasons given by the learned trial Judge for acquitting the accused from major charge of murder are neither legal nor proper and hence required to be reappreciated by this Court. He invited the attention of this Court to the evidence of Suryaben and contended that there is no contradiction in her evidence. He contended that Suryaben was a natural eye witness as her presence at the place of occurrence was natural. She came with her husband who is the victim at the place of occurrence. He further contended that simply her statement was recorded after 10 days of the occurrence ipso facto cannot be considered as a ground to discard her testimony. He further contended that if one peruses the evidence of the investigating officer and the testimony of Suryaben, then it is true that there is some discrepancy with regard to the date of recording of her statement as according to the investigating officer it was recorded on February 28, 1985 whereas according to Suryaben her statement was recorded after 10 to 12 days of the incident. Therefore, according to the learned

APP, evidence of Suryaben is sufficient to convict the accused for the commission of offence of murder. He therefore urged to allow this appeal by convicting the respondent for commission of the offence of murder of deceased Ramsinh.

4. Mr. Buddhbhatti, learned advocate for the respondent/accused supported the impugned judgment and order of acquittal of the offence of murder throughout. According to him, the learned Sessions Judge has rightly disbelieved the evidence of Suryaben as according to her own testimony, her statement was recorded after 10 to 13 days after the incident while according to the investigating officer her statement was recorded on the same day. In this connection he has also invited the attention of this court to para 9 of the impugned judgment wherein the learned Sessions Judge has recorded that 'on seeing the police diary, Suryaben's statement was recorded on 28.2.1985' and therefore the learned trial Judge has rightly disbelieved her evidence. It is also asserted by Mr. Buddhbhatti that according to Suryaben the accused inflicted stick blow on the occipital region but in fact the injury is on the parietal region and therefore she cannot be an eye witness to the incident. Besides this he has also drawn the attention of this court to the fact that she is residing at about 1000 to 1200 ft. away from the house of the accused. On the aforesaid premise, Mr. Buddhbhatti, learned advocate for respondent contended that there is no infirmity in the judgment and order recorded by the learned Sessions Judge in recording the acquittal of the respondent/accused of the charge of murder. He, therefore, urged to dismiss the appeal.

5. We have considered the submissions advanced by the learned advocates appearing for the parties. We have also reassessed and reevaluated the oral as well as documentary evidence produced at the trial.

6. So far as the homicidal death of Ramsinh is concerned, the prosecution has placed reliance on the oral evidence of P.W.4, Dr. Smitaben Chetanbhai at Ex.11 who has performed the autopsy on the dead body of Ramsinh. She has inter alia testified that the nature of injuries which were found on the dead-body of the deceased was sufficient to cause the death in the ordinary course of nature and death was due to shock due to intra cranial haemorrhage. Autopsy report is produced at Ex.12. Therefore according to us, the oral testimony of Dr. Smitaben Chetanbhai unequivocally suggests that the deceased Ramsinh died a homicidal death.

7. Now the question which falls for our determination is as to who is the author of the said injuries. In this connection, prosecution has examined P.W.2, Pratapji, at Ex.8. According to him, the dispute was between him and accused Navuji in connection with the amount of the share in the sale price of Raida. He had gone to Navuji with Rs.600/- At that time Navuji demanded more money for his labour work and thereafter quarrel started. Accused abused him using filthy language and inflicted stick blow but as he raised his hand the said blow fell on his hand and second blow was given on his waist. The said incident had taken place at 8 O'clock. On receipt of the injuries he felt giddiness and therefore he ran away. Thereafter he came to know that his son-in-law - deceased Ramsinh had gone there and upon his head also the accused Navuji inflicted stick blow and on receipt of head injury Ramsinh was admitted to V.S. Hospital and during the course of treatment he died at V.S. Hospital, Ahmedabad. From the above oral evidence of P.W.2, Pratapji, at Ex.8, it becomes clear that he had not seen the incident of murder of Ramsinh as he ran away from the place of occurrence.

8. The prosecution has thereafter placed reliance on the evidence of P.W.3, Suryaben at Ex.10, who according to the prosecution, was present at the spot of occurrence at the time of the incident. She is the daughter of Pratapji and widow of deceased Ramsinh. She has inter alia testified that Navuji gave stick blow on the occipital region of her husband Ramsinh. In cross-examination she has stated that house of Navuji is 1000 to 1200 ft. away from her house. It may be noted that during the examination-in-chief she has stated that her statement was recorded after 10 to 12 days of the incident. The learned Sessions Judge has perused the police diary wherein it is mentioned that the statement of Suryaben was recorded on 28.2.1985, that is, the day on which the incident has taken place. The prosecution is unable to give satisfactory reply as to why there is discrepancy in the date of recording of her statement. If we accept the evidence of Suryaben, there is no manner of doubt that according to her, her statement was recorded after 10 to 12 days of the incident whereas according the investigating agency her statement was recorded on 28.2.1985. Therefore, the learned trial Judge has recorded finding that Suryaben's evidence cannot be believed and she cannot be an eye witness to the incident. Had she been an eye witness to the incident, she herself would have lodged the complaint or in the complaint her name would have figured as an eye

witness but that is not so in the present case. Besides this, according to Suryaben, the accused gave stick blow on the occipital region of the deceased whereas as per the medical evidence deceased died because of injury which he has received on the parietal region. Mr. Sheth, learned APP is unable to dislodge this finding recorded by the learned Sessions Judge. We, therefore, agree with the finding recorded by the learned trial Judge that Suryaben cannot be an eye witness.

9. Besides this, for the alleged incident, one Janva Jog entry was entered in the Kalol Police station for the commission of offence under sections 323 and 325 of the IPC on the basis of the information conveyed by complainant Pratapji. The prosecution has not produced on record the said Janva Jog entry. The learned Sessions Judge has not placed reliance on the complaint which was initially exhibited vide Ex.8 and thereafter deexhibited. The learned Sessions Judge has not placed reliance on the said evidence and according to us he did rightly so.

10. On over all view of the matter, it is clear that the prosecution case rested upon the sole testimony of Suryaben but her statement is bristled with contradictions so far as the date of recording of her statement is concerned. There is a variance in her evidence with respect to the injuries caused on the deceased also.

11. In view of the aforesaid state of affairs of the evidence, we are of the opinion that the learned Trial Judge has very rightly appreciated the evidence and the view taken by the learned trial Judge is reasonable and even if two view are possible, High Court normally should not interfere with the view taken by he learned trial Judge if it is reasonable. Hence the judgment and order passed by the learned trial Judge does not warrant any interference by this court and therefore the appeal deserves to be dismissed.

12. For the foregoing reasons the appeal fails and is dismissed. The bail bonds shall stand cancelled and sureties are discharged.

(M.C. Patel, J.)

(A.M. Kapadia, J.)

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